IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3756 of 2007()

CC.70/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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REVN. PETITIONER: REVISION PETITIONER/2ND ACCUSED:

BOBY VARGHESE,
PULLOLIL HOUSE, NELLIPOYIL, PULLOORANPARA P.O.,
THIRUVAMBADI VIA., KOZHIKODE DISTRICT.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS: RESPONDENTS/1ST ACCUSED:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE STATION HOUSE OFFICER,
KODANCHERRY POLICE STATION, KOZHIKODE DISTRICT.

3. SRI.J.JOY, S/O. JOSEPH DECRUZ,
CIRCLE INSPECTOR OF POLICE, CITY TRAFFIC POLICE,
KOZHIKODE (RETIRED).

BY PUBLIC PROSECUTOR SRI.P. RAVEENDRAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3756 of 2007

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Dated : 03-12-2007

ORDER

The revision petitioner who is the 2nd accused in C.C. No. 70 of 2006 on the file of J.F.C.M. -II, Thamarassery challenges the order dated 18-4-2007 passed by the said Magistrate framing charge against him and the first accused for an offence punishable under Sec. 212 read with Sec. 34 I.P.C. and 221 read with Sec. 34 I.P.C.

2. I heard the learned counsel appearing for the revision petitioner/2nd accused and the learned Public Prosecutor.

3. The case of the prosecution can be summarised as follows:-

On 12-5-2004 at about 2 p.m. Emerson and Jins who were accused Nos. 1 and 2 in Crime No. 76 of 2004 of Kodancherry Police Station had allegedly committed theft of 25 vanila plants and removed the same in a jeep. The present A2 (revision petitioner) had harboured the aforesaid persons on 6-4-2004 that the first accused who was a City Traffic Police Circle Inspector, Kozhikode City Control Room who was legally bound to apprehend and keep in confinement the said Emerson and Jins who had committed an offence

punishable under Sec. 379 I.P.C. intentionally failed to apprehend the said Emerson and Jins but instead, aided them to escape from lawful custody on 6-6-2004 and A1 and A2 have thereby committed an offences punishable under Secs. 212 and 221 read with Sec. 34 I.P.C.

4. The whole charge turns upon the commission of theft by Emerson and Jins who are accused Nos. 1 and 2 in Crime No. 76 of 2004. But as per Annexure A1 judgment dated 17-5- 2007 the said Emerson, Jins and one Shamon who were the accused in Crime No. 76 of 2004 of Kodencherry Police Station were acquitted of the charge for an offence punishable under Sec. 379 read with Sec. 34 I.P.C. When there is no evidence of any offence having been committed the said Emerson and Jins who have been acquitted by a court of competent jurisdiction as per Annexure A1 judgment dated 17-5-2007 in C.C. 338 of 2004, there cannot be any act of harbouring the said offenders. The act of intentionally aiding them to escape from the lawful custody is actually against the first respondent, a public servant who was the City Traffic Police Circle Inspector, Kozhikode City Control Room. He is not before this Court. Even otherwise when no offence was committed by the said Emerson and Jins there was no question of the police apprehending them or aiding

their escape from the lawful custody. Hence, there is no basis for the charge framed against the revision petitioner , the 2nd accused. Annexure A2 charge, so far as it relates to the 2nd accused is set aside and the 2nd accused will stand discharged of the aforesaid offences.

This Revision is allowed as above.

V. RAMKUMAR,
(JUDGE)

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